

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LENA M. RICHARDS)	
Claimant)	
VS.)	
)	Docket No. 165,511
KING LOUIE INTERNATIONAL, INC.)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY CO.)	
Insurance Carrier)	

ORDER

The Appeals Board has considered the claimant's request to review the Award of Administrative Law Judge John D. Clark entered in this proceeding on October 6, 1994.

APPEARANCES

The claimant appeared by her attorney, Carlton W. Kennard of Pittsburg, Kansas. The respondent and its insurance carrier appeared by their attorney, Garry W. Lassman of Pittsburg, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge found claimant entitled to benefits for a scheduled injury to the left upper extremity. The claimant requests the Appeals Board review the issue of the nature and extent of injury and disability. Claimant contends she has experienced a nonscheduled injury, because she has also injured the left shoulder. The nature and extent of disability is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be affirmed. The findings of the Administrative Law Judge are adopted by the Appeals Board to the extent they are not inconsistent with the specific findings and conclusions set forth herein.

Claimant worked as a sewing machine operator for the respondent which work required the repetitious use of her upper extremities. On or about October 17, 1991, claimant developed swelling in her left elbow. Although claimant had experienced similar swelling in the past, this time it did not resolve and she therefore sought medical care and treatment. Claimant eventually sought treatment from Robert F. Stringer, D.O., an orthopedic surgeon from Joplin, Missouri, who twice operated the left elbow to remove the bursa sac and to perform a medial epicondylectomy with a decompression of the ulnar nerve.

Dr. Stringer saw the claimant numerous times while treating her between October 1991 and May 1993. As of his last exam in May 1993, Dr. Stringer believes the claimant has a seven percent (7%) permanent partial impairment of function to the left arm. The doctor's final diagnosis is left elbow pain, status post medial epicondylectomy with decompression and status post olecranon bursectomy of the left elbow. At her visit with Dr. Stringer in May 1993, claimant complained of difficulty with external rotation of the left shoulder. Despite claimant's subjective complaints, Dr. Stringer believes claimant has experienced injury to the left arm only.

At her attorney's request, claimant was evaluated in June 1992 by orthopedic surgeon, William D. Smith, M.D., of Bartlesville, Oklahoma. At this evaluation, claimant's primary complaints were left elbow pain that radiated distally into forearm and proximally into the arm and shoulder. In addition to finding full range of motion of the left shoulder, the doctor failed to find any abnormal pathology in the shoulder. Because of the ulnar nerve compression syndrome for which she was treated, Dr. Smith believes claimant has referred pain that is radiating from the ulnar nerve at the elbow to the left shoulder. According to the doctor, the ulnar nerve passes through the shoulder to its origin in the neck. Dr. Smith believes claimant has experienced a five percent (5%) permanent partial impairment of function to the left upper extremity which converts to a three percent (3%)

functional impairment to the body as a whole. His impairment rating includes the left shoulder.

The Appeals Board finds Dr. Stringer's opinion the more persuasive. Although Dr. Smith believes the claimant is experiencing referred pain in the left shoulder, the doctor does not indicate how claimant may be impaired or disabled by this subjective symptomatology. According to Dr. Smith, claimant's range of motion has not been affected and there is no evidence that the pain has otherwise affected claimant's activities or abilities. Further, the complaint of difficulty with external shoulder rotation made to Dr. Stringer in May 1993 occurred after claimant had returned to work for respondent for approximately one (1) year during which she was performing strenuous work involving her shoulders.

The situs of the resulting disability, not the situs of the trauma, is definitive of whether a disability is scheduled or nonscheduled. See Bryant v. Excel Corp., 239 Kan. 688, 722 P.2d 579 (1986). The instant case is distinguished from Bryant because in that proceeding the evidence established the referred pain actually impaired claimant's ability to use her shoulder and the condition was permanent. In the proceeding now before us, the evidence fails to prove impairment or disability to the shoulder.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of the Administrative Law Judge entered in this proceeding on October 6, 1994, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
John D. Clark, Administrative Law Judge
George Gomez, Director